

**POSTED August 23, 2007**

**Addendum #2  
Competitive Process for Broker Selection for Insurance Reserve Fund  
Excess Property Program**

**Question Received August 23, 2007, with answer and attached letter  
from the Department of Insurance**

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65. The South Carolina Department of Insurance has articulated on multiple occasions that a broker/agent may not charge a fee for placement and servicing of insurance unless the fee is contained in the insurance policy. Since no insurance company will go through the time and expense to file with the State a specific policy for only one placement, can the fee agreement your RFP requires be in violation of the South Carolina Department of Insurance's interpretation of the law?

Since the IRF RFP has broker compensation on a fee basis, would you please confirm that the South Carolina Department of Insurance has provided a written opinion that the selected broker will not be in violation of any South Carolina statute or regulation by either providing insurance placement or related services as part of the services for the fee?

The IRF requested the opinion of the SC Department of Insurance as to whether the IRF may enter into an agreement with an insurance broker to procure insurance in exchange for a flat fee. The Department of Insurance letter is attached to this addendum. The letter states that "The Department sees nothing improper in such an arrangement".



**South Carolina**  
**Department of Insurance**  
Division of Consumer and Legal Services  
Office of General Counsel  
1201 Main St, Suite 1000  
Columbia, South Carolina 29201

**MARK SANFORD**  
Governor

**SCOTT H. RICHARDSON, CPCU**  
Director of Insurance

Mailing Address:  
P.O. Box 100105, Columbia, S.C. 29202-3105  
Telephone: (803) 737-6200

August 3, 2007

Derrick K. McFarland, Esquire  
Office of General Counsel  
South Carolina Budget and Control Board  
P.O. Box 11608  
Columbia, South Carolina 29211

Dear Derrick:

You asked for the Department's position concerning whether the Insurance Reserve Fund may enter into an agreement with an insurance broker to procure insurance in exchange for a flat fee. The Department sees nothing improper in such an arrangement.

Section 38-45-10 defines an "insurance broker" as "an individual licensed by the director or his designee to represent citizens of this State in placing their insurance. An insurance broker may place that insurance either with an eligible surplus lines insurer or with a licensed insurance agent in an insurance carrier licensed in this State." An insurance broker is not synonymous with an insurance agent, who represents an insurance company and who is typically compensated by the company on a commission basis. *See* S.C. Code Ann. § 38-43-10.

There is no prohibition in Title 38 of the South Carolina Code against compensating an insurance broker on a fee-for-service, as opposed to a commission, basis, nor has the Department interpreted Title 38 as imposing such a prohibition. Indeed, as the Government Efficiency and Accountability Review Committee noted, many states compensate brokers in this manner for procuring insurance on their behalf. Section 38-45-160 expressly allows brokers to charge fees, provided those fees are made part of the insurance contract.

I trust this answers your question. Please give me a call if you need to discuss this issue further.

Sincerely,

A handwritten signature in dark ink, appearing to read "Jeff", written over a horizontal line.

Jeffrey A. Jacobs  
Chief Legal Counsel

Derrick K. McFarland, Esquire  
August 3, 2007  
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cc: Director Scott H. Richardson  
Deputy Director Gwendolyn Fuller McGriff  
Deputy Director James Byrd